

Advocacy Tasmania Submission: Sessional Committee Government Administration 'A' – Short Inquiry Process – Roy Fagan Centre

Your Say Tas is an independent not-for-profit organisation that provides client-directed advocacy services to older people, people with a disability, people living with mental illness, and people who use alcohol and other drugs. Your Say Tas welcomes the opportunity to provide feedback to the Short Inquiry Process into the Roy Fagan Centre.

In its request for feedback on the implementation of the recommendations contained in the final report of the Roy Fagan Older Persons Mental Health Services, released July 2021, the Committee indicated it would appreciate the perspective on whether staffing levels have increased, and if progress has been made in the adoption of the recommendations through changes in procedures and protocols.

It is noted that the Review made the following recommendations:

1. OPMHS should be a state wide program within SMHS and have its own dedicated leadership.
2. OPMHS should develop a comprehensive system of Clinical Governance, with dedicated resources to support this function, in line with the Tasmanian Quality Governance Framework.
3. OPMHS should be funded to deliver the full range of service elements found within a contemporary state wide OPMHS.
4. The RFC should undertake a project over the next 12 months to develop a model of care based on a new level of resourcing adequate to undertake the roles it will need to deliver in the next 10 years.
5. The Community OPMHS should develop a model of care that meets the needs of the Tasmanian community based on similar programs elsewhere in Australia.
6. OPMHS should develop a project, as part of the broader Tasmanian Mental Health reforms, that ensures they are able to take advantage of processes that will assist them in attracting a suitable workforce. He found the Roy Fagan Centre was out of date and inadequate for some of the people who were admitted to the facility.

Your Say Tas cannot respond directly to the issue of whether there has been an increase in staffing levels and if there has been progress made in the adoption of the recommendations through changes in procedures and protocols. Clients have not reported to Your Say Tas either an improvement in service delivery or in changed staffing levels.

However, there remains substantial barriers for those within the Roy Fagan Centre to reach out and access support. In addition, a significant change occurred in June 2021 that has substantially limited Your Say Tas' access and contact with people on involuntary orders under Tasmania's Mental Health Act, including those in the Roy Fagan Centre.

I have attached recent correspondence to the Deputy Premier seeking urgent resolution of this issue. Without regular, independent advocacy access and support for people on involuntary orders, we are incredibly concerned that further abuses will be perpetrated against vulnerable people within state care at locations like the Roy Fagan Centre. We would urge the Sessional Committee to consider this broader issue of how people in the Roy Fagan Centre can access effective, independent support and how organisations like ours can know what is happening, out of sight and mind, to vulnerable Tasmanians in these locations.

We believe there likely remain significant issues. Since the report's release, through client contact, Your Say Tas has been made aware of a physical assault on a resident at the Roy Fagan Centre, resulting in significant injuries. It is understood that at the time of the assault, there was an absence of staff in a common area, which was attributed as a factor in the assault by the family.

During periods of COVID-19 restrictions, the Roy Fagan Centre has not been able to facilitate online access to allow for the provision of information sessions by Your Say Tas to residents. Your Say Tas attended Roy Fagan for a face-to-face session in October and November 2021 but has not had access since that time.

Before these visits, attempts in 2020 by Your Say Tas to present information via online delivery to residents was also not successful. This contrasts with the ability of Your Say to present online sessions to residents in other Tasmanian Aged Care facilities during the period of Covid lockdown, where online information sessions have generally been facilitated by staff.

23 June 2021

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Dear Ministers,

Reduction in individualised support for people subject to involuntary orders in Tasmania

Thank you for meeting with me and our Deputy CEO last Thursday, 17 June 2021. I appreciated the frank and open discussion regarding Tasmania's Guardianship and Administration system and its devastating impacts on our clients and the broader Tasmanian community. I look forward to reading your formal responses to the matters we raised and to working together to make a real difference to improving the lives of people who experience these systems.

Alongside the support we provide to people subject to orders under the Guardianship and Administration Act 1995, we are also funded by the Crown to provide support and representation to people subject to orders under the Mental Health Act 2013 (the Act). These are people who experience many of the same issues we are raising regarding Guardianship and Administration, but under newer legislation with stronger rights and decision-making protections. Nevertheless, they are at a significant disadvantage at hearings under that Act, particularly when they are not supported to prepare beforehand or represented at the actual hearing, either by Legal Aid Tasmania, a private lawyer, or by us.

By way of background, back in 2000, the previous President of the Tribunal, Ms Debra Rigby, raised concerns that most people appeared unrepresented in a jurisdiction that had significant impacts on people's freedoms, liberty and ability to make their own decisions. Since 2004, the Mental Health Tribunal (the Tribunal) and the Crown have ensured that all people appearing before the Board are provided with the option of independent support.

We worked hard, alongside the Tribunal, University of Tasmania Law School and the Department of Health, to address this issue and the Mental Health Tribunal Representation Scheme (MHTRS) was established. We have continually provided this support via the MHTRS since that time working very

constructively with Tribunal staff. Each year, we have supported over 1,000 Tasmanians before or during their Tribunal Hearings. Additionally, through our contact with these vulnerable Tasmanians via the Tribunal notification processes, we have been able to provide more intensive, one on one advocacy support. This has included support and resolution of the very real issues people living with mental health issues in Tasmania experience with accommodation, abuse, discrimination, and other support systems. We have continued to provide this support remotely across COVID-19, supporting hundreds of people by phone to understand the system, decide what they want to say at their hearing, and understand their rights and options. Again, many more have also been assisted with advocacy support.

While it may be an unfortunate coincidence, we were recently contacted by the President and Registrar of the Tribunal. This occurred after we raised systemic issues relating to Tasmania's broader substitute decision-making system. The President and Registrar have advised us of their decision to stop providing personal information necessary for this much needed support to occur. This is a practice that has been in place for some 17 years. I am perplexed as to why this has suddenly become an issue when the President and Registry, along with our funders, have facilitated this very process since the MHTRS's commenced and I welcome your advice as to why this has occurred at this time.

It is incredibly unfortunate that at the same time we are working together to improve support and outcomes for people subject to substitute decision making, that actions are being taken to, effectively, remove independent supports that have been in place for the very same people.

I understand from the Tribunal that they intend to replace the individualised support currently provided to people with the provision of a brochure outlining that independent support is available. I believe this approach is a significant step backwards and will not appropriately meet the obligations of the Tribunal to arrange for the representation and support of Patients under the Act, who may otherwise be at a substantial disadvantage.

The reality we hear directly from our clients is that:

- paperwork is often not received at all for hearings under the Act
- when paperwork is received, it is not understandable or inaccessible for them, either due to disability or literacy; and
- there is often no effective support from the system itself to help people understand and navigate the system.

There may indeed be better ways to support people with the Act outside of existing referral processes which could be reviewed. However, replacing individualised support with a brochure is not appropriate nor a substitute for a proper review.

One solution would be for the Tribunal, or the new Tasmanian Civil and Administrative Tribunal after its commencement, to directly and personally contact everyone listed for hearing before protective streams. These personalised discussions will need to cover the full range of available supports and ensure that people understand what the Tribunal is and what impact its decisions can have on their lives and freedoms, in an accessible and tailored way. As outlined above, this was, until late last week, one of the supports that the Crown has funded us to do for over 17 years. After that discussion, the Tribunal could then make direct referrals for support with client consent.

I am writing to you both to request your urgent advice that direct and individualised support will continue to be provided to people listed for hearing. This work can be done directly by the Tribunal

itself, so that people have a practical choice in what supports they wish to access. However, the immediate termination of the individualised supports we have provided to vulnerable Tasmanians over the previous 17 years, without this alternate support in place by the Tribunal itself, will cause a significant reduction in the rights and protections of people subject to substitute decision making in Tasmania.

I look forward to your advice regarding these additional matters and working together to find an appropriate resolution.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Leanne Groombridge', with a stylized flourish at the end.

Leanne Groombridge
Chief Executive Officer

Mental Health Tribunal Representation Scheme (MHTRS)

Your say Advocacy Tasmania

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Operation of the Mental Health Tribunal Representation Scheme (MHTRS)

Background

The MHTRS was established in 2003 to assist people living with mental health illness to communicate their wishes to the MHS (at the time, the Mental Health Tribunal) when there was an order being sought under the MHA or when regular reviews by the were being undertaken.

Your Say Tas is funded by the Crown and, since the inception of the MHTRS, has effectively worked with the MHS to ensure that people subject to orders under the MHA are provided with accessible information, individualised capacity-building support, warm referrals to appropriate services, and advocate representation (if requested) at hearings before the MHS. This scheme, as it operated prior to June 2021, was highly effective in enabling Your Say Tas to provide support to people who had matters listed for hearing.

Since the establishment of the MHTRS until June 2021, the MHS provided Your Say Tas with Tribunal Timetables and contact information for people who have been scheduled for a hearing. Your Say Tas was then able to pro-actively contact people directly. Determined attempts were made to contact and offer support to 100% of listed Tasmanians whose details were provided by MHS. In a minority of cases, contact information provided was out-of-date (i.e. phone numbers no longer connected, or no record held at MHS), while others contacted acknowledged the call and did not wish to engage. For the majority, however, the contact by Your Say Tas enabled personalised discussions to be held about the range of available supports and ensured that the person understood what the MHS was and what impact its decisions could have on the lives and freedoms in an accessible and tailored way. Those who were provided with direct support included people who requested input during the hearing, and those who felt, after extended sessions with the advocate, empowered to speak on their own behalf or with the assistance of family and/or friends by their side.

Extent of representation provided

Under the MHTRS for the period 2018 to 2020, data shows that Your Say Tas provided support to an overwhelming majority of people listed for MHS hearings. It should be noted that this resulted in only a very small number of cases where the individual felt a need for advocacy support at hearing; rather, most support occurred prior to the hearing. Pre-hearing support also assists individuals to obtain support for other issues that may impact on their well-being, such as housing and homelessness, or access to disability supports.

In 2018, 1,506 people were listed by the MHS for hearings; of this number, a proportion of cases would not have proceeded to hearing or may not have had up-to-date contact provided to us by the MHS (especially those based in the community rather than inpatient care). However, Your Say Tas provided support to 1,316 Tasmanians, so 87.3% of all persons listed for hearing. In 2019, 1,563 people were listed by the MHS for hearings with Your Say Tas providing support to 1,372 Tasmanians- 87.3% of all persons listed for hearings by MHS. In 2020, 1484 people were listed by the MHS for hearings and Your Say Tas provided support to 1,345 Tasmanians, so 90.6% of all persons listed for hearings by the MHS.

Data provided to Your Say Tas by TASCAT indicates that there has been reduction in the appearance of non-legal advocates before the MHS in actual hearings since 2018 from 6% of cases to 0.35% of

cases in 2021. Further, it was noted that the rate of appearance did not appear to have been impacted by the cessation of providing the hearing lists to Your Say Tas, with 3 appearances in the first half of the first half of 2021 (before the change) and 3 appearances in the second half of 2021 (after the change). As acknowledged by the TASCAT, this decline primarily reflects the impact of COVID. Further, a focus on hearing appearances only does not recognise the primary benefits for individuals from receiving advocacy support and does not recognise the intended approach of the MHTRS to empower and build capacity in clients to self-advocate. This has been directly and heavily impacted by the change in approach to information provision.

As noted, since the change in provision of contact information and hearing dates to the MHTRS, there have been three clients supported at a hearing. There have only been 7 other enquiries since June to the end of 2021 from vulnerable Tasmanians who had hearings scheduled and who were provided with support, guidance and information regarding the hearing process and possible outcomes. In previous years we would have supported around 750 vulnerable Tasmanians in a 6-month period. The impact of the MHS change has meant that only 10 people have been supported in this same period, a reduction in support of 98.67%. In addition, due to the change, many vulnerable Tasmanians living with mental health issues have not had the support of an Advocate to resolve other issues that have likely adversely impacted their mental health outcomes. This in turn, increases the likelihood of their continued contact with the MHS.

Benefits of advocacy support provided by the MHTRS

While resource intensive, personalised conversations by Your Say Tas play a crucial role in educating people about the nature of a hearing in the MHS. It supports clients to understand the potential impacts on their lives, and the matters relevant to the decision to be made by the MHS. The primary objective of the scheme is to make sure that an individual's voice was heard, that the person has their rightful opportunity to participate in a meaningful way, and is supported to express their perspective and desired outcome. Accordingly, proactive pre-hearing contact is effective to empower people to have their say during the hearing, even if the person chooses not to have an advocate attend the hearing.

Pre-hearing contact also realises additional benefits for the efficient operation of the MHS. In some cases, issues in relation to missing documentation can be identified and resolved prior to the hearing. Contact with those listed has resulted in ensuring they have been provided with their MHS hearing papers, such as their Treatment Plan, so they were better informed about what is being sought by the MHS in terms of medications and treatments. For example, in some previous cases, the Treatment Plan has outlined the intention to use Electro-Convulsive Therapy (ECT), which the client was unaware was planned. On a more basic level, many of the people contacted were unaware they were even scheduled for a hearing, or their understanding was that the hearing had been scheduled for a different day and/or time. Importantly, every person reached by Your Say Tas was provided with support in some form, whether this was to confirm details of their hearing, explain what being placed on an Order entailed, what the MHS was about and why they were under an Interim Order rather than being a voluntary patient, or to provide other support as outlined below.

The type of assistance offered, and the benefits obtained for the client is illustrated in the following case examples (note that real names have not been used):

Personal story: Adrian

Adrian was a patient at RHH and listed for an Application Hearing. An Your Say Tas employee contacted Adrian who had not been advised he had been placed on an Assessment Order (then an Interim Order), and that a request for a Treatment Order was to be heard by the Tribunal. He had not been provided with any paperwork, nor had he been told by his treating doctor that an application had been made. Adrian had never heard of the Mental Health Tribunal and was at a loss to know what was happening to him. He was assisted by Your Say Tas who contacted the Legal Orders Co-ordinator at the hospital regarding his paperwork (including Treatment Plan) and he was supported further with his hearing.

Personal Story: Oliver

Oliver was an inpatient at the RHH when contacted by Your Say Tas about his upcoming hearing. He said he had been visiting Tasmania from interstate and that he had been brought to the RHH Emergency Department by Police after an altercation with another person at a bar. He found himself in the RHH on the Psychiatric Ward. He had been there 8 days when Your Say Tas made contact about his scheduled hearing. He was not a Tasmanian resident and knew nothing about the mental health system in this State. He was confused about how he ended up there and why he was being detained and said that his family had no idea where he was as his mobile phone had been confiscated on admission. He didn't know anybody in Tasmania and was distraught to learn of the upcoming tribunal hearing. Your Say Tas organised for him to receive documentation and explained the processes. He was assisted to get his mobile phone returned to him. He was discharged prior to the hearing taking place.

Personal Story: Simone

Simone was a community mental health client and was listed for a 180-day review of her existing order. Your Say Tas contacted Simone, who advised that she wasn't on an order saying that her order had been discharged. It was explained that she had been listed and she was provided with the date, place and time of the hearing. She followed up with the MHS regarding this advice and was then told by the MHS, despite her thinking she had been discharged, that this had not occurred, and she was indeed required to attend. She was then supported by Your Say Tas and her order was discharged prior to the hearing. Had Simone not been contacted by Your Say Tas, she would not have known about still being on an order and it may have been confirmed without her knowledge.

During these discussions Your Say Tas was able to offer other supports and warm referrals to Legal Aid Mental Health lawyers in the client's region.

It must be remembered that when individuals are listed for a hearing, many are very unwell- especially those being held in an inpatient setting. They need independent assistance to enable them to reach out to others for support. Often in hospital situations, it is incredibly difficult to access a phone, particularly since personal mobile phones are routinely confiscated, making it even more difficult to access support.

Overall, the MHTRS allowed for more meaningful involvement by the person in the MHS process, which reduced feelings of powerlessness and helplessness. The MHTRS facilitates procedural fairness and supports the fundamental human rights of people experiencing mental ill health.

A further benefit of Your Say Tas' proactive contact with those scheduled to appear before the MHS was advocacy, or self-advocacy, support with issues that do not relate directly to the MHS. This support has covered issues including (but not limited to):

- Housing and homelessness issues
- Treatment by hospital staff (e.g. phones confiscated, requests unanswered, information not provided)
- NDIS Access
- Support to speak with their NDIS coordinators and services
- Support to speak with their mental health treating team regarding diagnosis or medication
- Assistance to access community or residential mental health supports
- Access to primary healthcare and General Practitioner support
- Support to access historical and current medical records
- Support to obtain information from Police
- Making complaints to hospitals and/or State Government Ombudsman regarding treatment
- Referrals to Relationships Australia regarding family mediation
- Guardianship and Administration Orders
- Support to liaise with the Public Trustee
- Support to access financial counselling
- Referrals to Tenant's Union and Legal Aid
- Access to medications and pain management
- Access to Drug and Alcohol support services

As indicated in the case examples below, the ability to identify and support vulnerable Tasmanians address other issues directly benefits those individuals and may also serve to reduce or remove the need for ongoing MHS involvement.

Personal story: Roger

Your Say Tas contacted Roger regarding a 60-day review. We had previously provided support to him at his Application Hearing. Roger felt he was fine to attend the review hearing however asked if there was any assistance available to him to explore his eligibility for the NDIS. An intake was generated without the need for him to go through further processes, and an Your Say Tas Advocate assigned to assist him to connect with Baptcare Australia and to attend the initial meeting with a Local Area Coordinator. Roger came back to Your Say Tas following a rejection by NDIS seeking help with lodging a request for a review of a reviewable decision. He was provided with support throughout this process with a successful outcome. He was approved for NDIS support with provided him with sociopsychology supports regarding his mental health. This all occurred as he had been contacted by an Your Say Tas employee as part of the MHTRS.

Personal story: Janine

Janine was admitted to the RHH following a fall. An application for a Treatment Order was submitted by her treating team. She explained to the Your Say Tas employee who contacted her about her upcoming hearing, that she felt this action came about because she was homeless, and that she did not have a mental health issue. She asked if there was any help available regarding her housing situation. An intake was organised and, with the help of an Your Say Tas Advocate, she was able to access emergency housing – which she had been advised needed to happen prior to being

discharged. Once she had secured housing with our assistance she was discharged from hospital and the application for a Treatment Order was also discharged. This was able to be sorted quickly for Janine due to contact made by the Your Say Tas employee as part of the MHTRS phone contact process.

Personal story: Rainier

Rainier was on a Treatment Order and an Your Say Tas employee contacted him as he was listed for a 180-day review. Rainier explained he was not attending his hearing and didn't want to have anything to do with the process. He detailed an issue he was having with a pharmacist not treating him with respect when he attended to collect vital medication. The Your Say Tas employee processed an intake, and he was assigned an Your Say Tas Advocate who, on his behalf, spoke to the pharmacist regarding his experience. Rainier had been considering not going to the pharmacy and ceasing taking medication but after his Advocate addressed his concerns, he felt comfortable visiting the pharmacy as he was treated more respectfully.

Personal story: Suzanne

Suzanne was listed for review of an existing order. She advised the Your Say Tas employee that she did not attend hearings but in that conversation, she raised an issue about Community Mental Health Services and the case worker she has been assigned. The Your Say Tas employee completed an intake and organised an Advocate to assist her to communicate her wishes with Community Mental Health Services to ensure she received the services she had been promised.

Your Say Tas assistance can also support family relationships and facilitate the provision of support during the MHS process by family members.

Personal story: Christian

Christian, 17 years of age, was listed for an Application Hearing. He had experienced a drug induced psychotic episode for the first time. The Your Say Tas employee contacted him at the hospital and he told her that his major concern was about his mother who was very upset about him being in hospital. He asked if Your Say Tas could talk to his Mum and explain the processes, so that she didn't worry about him quite so much. Your Say Tas, with Christian's permission, spoke to his mother, explained what the process was and how Christian could get support if he felt he could benefit from having someone support him through this process. Christian's mother was able to support him once she knew the processes and what to expect. Christian's mother called several times to speak with Your Say Tas regarding the hearing processes and ongoing supports.

Relevance of advocacy support for human rights protection and the MHA

In the view of Your Say Tas, overall, the change to no longer facilitate pro-active advocacy contact raises significant human rights concerns for vulnerable Tasmanians in their contact with the mental health system, and undermines the protections for individuals contained in the MHA, the Mental Health Statement of Rights and Responsibilities, and under international human rights law.

International law

Under international law, the Convention on the Rights of Persons with Disabilities (CRPD) promotes, protects, and ensures the full and equal enjoyment of all human rights and fundamental freedoms for all people with disabilities, and promotes respect for their inherent dignity¹. In particular, Article 12 contains the right to equal recognition before the law, which recognises and protects the right of persons with disability to exercise legal capacity on an equal basis to others. This ‘requires the provision of support to enable substantive rights to be claimed’ and recognises the right to access ‘appropriate support to be able to exercise legal capacity’².

Relevant to Your Say Tas’ concerns, the key themes that emerged in this research were that:

- While there was potential for meaningful participation in tribunal decision-making, this was often limited in practice
- Person-centered practice requires that tribunal processes are accessible, including the provision of accessible information, and there was generally a need for additional support to enable individuals to understand and claim their rights
- Advocacy was important as a means to support decision-making but its effectiveness was limited by a lack of awareness by clients of the purpose of advocacy
- Among those subject to the MHS process, there were feelings of powerlessness combined with an absence of full and meaningful participation. The MHTRS, under its previous model, facilitated best practice by allowing for meaningful participation, the provision of accessible information and additional support and a sense of empowerment. This has been undermined by the recent procedural change.

Australian Mental Health Statement of Rights and Responsibility

The Australian Mental Health Statement of Rights and Responsibility sets out the right to inherent dignity and equal protection. This recognises that ‘all people have inherent dignity and worth and are entitled to the equal protection of their human rights and fundamental freedoms without discrimination of any kind’ (Part I.1). This aims to ensure that ‘mental health consumers are aware of their rights and responsibilities and are able to exercise them’ and that ‘mental health consumers with reduced capacity ... are supported to understand and exercise their rights’. Clearly, the change to the operation of the MHTRS has undermined this statement by removing the ability for a person to be aware in a meaningful way of their rights.

Mental Health Act

As recognised in the 2020 review of the MHA, the Act was ‘intended to be rights-focused, and to reflect notions of consumer autonomy’³. Consistent with this focus is the recognition that a party to proceedings is entitled to attend the hearing, and that the person may appear personally or be represented by a lawyer, advocate or other person’⁴. However, the protection afforded by participation and representation is undermined in a practical sense if the person is unaware of the

¹ Mental Health Coordinating Council, *Mental Health Rights Manual* (5th ed), 2021, 2D.2.2

² Macgregor, Brown and Stavert, ‘Are Mental Health Tribunals Operating in Accordance with International Human Rights Standards? A Systemic Review of the International Literature’ (2019) 27(4) *Health and Social Care* e494

³ Office of the Chief Psychiatrist, Department of Health, *Mental Health Act 2013: Review of the Act’s Operation Outcomes Report*, 2020, 19

⁴ MHA, Sch 4 Part 2 (7)

hearing and/or the reality is that the person will not be able to arrange for legal representation or advocacy support. Further, it is recognised under the MHA that mental health services are to be delivered in the least restrictive way possible⁵. The importance of providing information to external and independent service providers to give effect to these protections is apparent in the data relating to support by Your Say Tas provided above pre and post change in practice. The utmost importance of human rights to the provision of mental health services is contained in the MHA, s15 which require that those exercising powers under the Act to have regard to the Mental Health Service Delivery Principles (set out in Schedule 1) including the need to:

- Respect, observe and promote the inherent rights, liberty, dignity, autonomy and self-respect of person with mental illness
- To interfere with or restrict the rights of persons with mental illness in the least restrictive way and to the least extent consistent with the protection of those persons, the protection of the public and the proper delivery of the relevant service
- To provide a service that is comprehensive, accessible, inclusive, equitable and free from stigma
- To promote the ability of persons with mental illness to make their own choices
- To involve persons receiving services, and where appropriate their families and support persons, in decision-making
- To respect the wishes of persons receiving services, and the wishes of their families and support persons, to the maximum extent consistent with the health and safety of those persons and the safety of others.

Your Say Tas' view is that regard to the Principles requires that a person be given an effective means to access support to allow for rights to be protected, for the MHS to be accessible and inclusive, and to allow for the autonomy and decision-making capacity of individuals to be respected, observed and promoted. Central to these Principles is the need for the person to understand the nature of the hearing and to be supported to self-advocate or have independent representation to ensure that their voice is heard. Accordingly, the reliance on individual to be aware of and contact the MHTRS (and the difficulties inherent in this) means the safeguarding of individual rights has been undermined by the change.

Balancing privacy with human rights concerns

As indicated, concerns in relation to legislative privacy protection led to the change to the longstanding practice. While Your Say Tas agrees that privacy is fundamentally important, it is noted that:

- Personal information protection is not absolute as under either the MHA and the PIPA, as there are already exceptions under both acts. Under PIPA, Sch 1 of PIPA allows for the disclosure of personal information where required or authorised by law. There is also provision under PIPA s 13 and 14 for exemptions to be created by the Minister where the public benefit outweighs, to a substantial degree, the public benefit from compliance with the personal information protection principles. Alternatively, exceptions can be created in Sch 1.2 of PIPA or within the MHA. In this regard, Your Say Tas' position is that there is substantial public benefit in giving effect to human rights protection (as outlined above)

⁵ MHA, s 12(d); Sch 1

when weighed against the need to give the protection of the information that is disclosed. It is noted that Your Say Tas historically only received information about the date and nature of the hearing (e.g. whether it was an application hearing, 180 day review hearing, or another type) and a mobile phone contact or location if the person was an inpatient. It did not receive any other information.

- Your Say Tas is already bound by requirements of confidentiality and privacy and would work cooperatively to develop any further protections that were considered necessary in relation to the limited information that is shared with it.
- As discussed below, possible models for reform exist in other Australian jurisdictions, where information is provided to an advocate/adviser to allow for pro-active contact to be made to support the rights of individuals.
- Consumers support a model that allows them to opt-out of support (rather than needing to opt-in) and have identified access to independent advocacy as more important than privacy concerns in the context of compulsory treatment under mental health legislation (Chris Maylea et al, *Evaluation of the Independent Mental Health Advocacy Service (IMHA): Final Report*, RMIT University, 2019, 29).

In summary, while Your Say Tas agrees that the privacy of vulnerable Tasmanians is of utmost importance, its view is that the provision of the hearing schedule and contact information to an independent advocacy service is a justifiable exception and appropriate legislative reforms to allow this to occur should be introduced. The utility of the MHTRS has significantly diminished because of its inability to identify people who are listed for hearing and make direct contact. As with the approach elsewhere, an opt-out rather than an opt-in model is appropriate and necessary to successfully maintain rights and to make it accessible to people appearing before the MHS.

Approach in other Australian jurisdictions

Your Say Tas notes that the models that exist in Queensland and Western Australia and being developed in Victoria for the provision of information by mental health services to advocates or independent advisers are different to the function of the MHTRS. However, these models reflect the importance attached in these jurisdictions to the provision of independent rights advice and support within the mental health system, and the ability to appropriately balance these rights with privacy concerns.

Queensland

A model exists in Queensland where confidential information can be shared with Independent Patient Rights Advisers (IPRA) who can proactively contact individuals in relation to their Mental Health Review Tribunal Hearings. IPRA have responsibility to ensure that people are advised of their rights and responsibilities under the MHA. While the role of the IPRA is broader than that of the MHTRS, one of the functions to provide advice as to rights at a hearing and assist with obtaining representation as requested and confidential information can be disclosed for this purpose.

IPRA are created under the *Mental Health Act 2016* (Qld). Under s 305, the Chief Psychiatrist can make policies and practice guidelines that apply. More details about the role is available here:

https://www.health.qld.gov.au/_data/assets/pdf_file/0021/465204/cpp-patient-rights-advisers.pdf

The *MHA 2016* requires the appointment of IPRA's (s 293) and one of listed statutory functions is to advise a patient or their nominated support persons, family, carers and other support person of the patient's rights at the hearing (s 294(a)). Under Ch 17, the provisions in relation to confidentiality are set out. There is provision for confidential information to be shared with IPRA to enable the person to perform a function under the Act (s 778(5)).

Western Australia

In Western Australia, an opt-out advocacy service operates where the *Mental Health Act 2014 (WA)* requires the Chief Mental Health Advocate to be notified by mental health services of every person on an involuntary treatment order (s 145) and of applications to the Mental Health Tribunal (s 446(1)(e)), and advocates can contact identified persons on their own initiative (s 358).

Victoria

In Victoria, the Independent Mental Health Advocacy Service (IMHA) is a non-legal mental health advocacy service that exists within Victoria Legal Aid. An independent review of IMHA has recommended that there should be legislative change to provide for an opt-out system so that there should be a responsibility on the IMHA to contact every person on a Treatment Order and to have details of such people provided to IMHA⁶.

Similarly, the Royal Commission into Victoria's Mental Health System recommended that there be legislative change to enable an opt-out model of non-legal advocacy services for consumers who were subject to or at risk of compulsory treatment (2021, Recommendation 56). The Commission stated that 'non-legal advocacy is an important human rights protection' but found that many consumers were not properly supported to exercise their rights because consumers may not be aware of or able to obtain advocacy support. The difficulties for consumers in processing information about the role of advocacy while in extreme distress underscored the difficulties of access created by an opt-in model that placed the onus on the individual to seek out advocacy services.

An opt-out model is currently being developed in Victoria as part of broader reforms to the state's mental health legislation. An Engagement Paper was released by the Department of Health, Victoria. This proposed the introduction of an opt out model with provisions to support access to non-legal advocacy for consumers, including an obligation on health services to contact the non-legal advocacy service at the time a person is placed on a compulsory order⁷. Your Say Tas understands that legislation developed in response to the Engagement Paper will be made publicly available in approximately June 2022.

Proposal for reform in Tasmania: Amendments to MHA

As identified, the PIPA creates a barrier to the provision of contact details and hearing dates by the MHS to the MHTRS as was the previous practice. While the general rule is that personal information cannot be disclosed, as noted, there are exemptions in Part 2 Division 2 of the PIPA as well as in

⁶ Recommendation 1, Chris Maylea et al, *Evaluation of the Independent Mental Health Advocacy Service (IMHA): Final Report*, RMIT University, 2019, 39

⁷ Department of Health, Victoria, *Mental Health and Wellbeing Act: Update and Engagement Paper*, 2021, 14 - 15

Schedule 1 Cl 2, in particular an exemption where information may be disclosed where it is required or authorised by law (Sch 2(2)(f)). Accordingly, Your Say Tas proposes an amendment be made to the MHA to create a provision that would allow for the disclosure of the information to the MHTRS. This would then fall within PIPA Sch 2(2)(f).

Under *MHA*, Part 7 contains provisions in relation to the disclosure of information. There is provision under s 134(1) for confidential or personal information about patients to be disclosed as authorised or required under ss (2).

- (1) An option is to amend the legislation to make an exception in s 134(2) for disclosure of information to the MHTRS to allow for the MHTRS to allow for the patient to be advised of their rights at the hearing. Section 134(2) provides for information to be disclosed in a number of circumstances, and an additional exception could be created here.
- (2) Another option may be to amend Schedule 4 of the *MHA*, which sets out the general procedures of the Tribunal and under clause 4, there is provision for notice of hearings to be given to parties to proceedings (as defined in cl 1) or such other persons as the Tribunal thinks fit in the circumstances. An amendment to clause 4 could allow the Tribunal to give notice of a hearing and contact information to the MHTRS (or such wording as is appropriate). This would be a more targeted and limited amendment that would allow notice to be provided to the MHTRS to upcoming hearings and would be sufficient provided this notice has some means of contacting the person.

Conclusion

In conclusion, given the critical importance of advocacy services in allowing individuals to be aware of their rights and to meaningfully exercise those rights and have their voice heard and the success of the MHTRS over many years to the benefit of clients and the MHS, proactive contact by Your Say Tas should be restored by legislative change to allow for personal information to be provided.

We would welcome the opportunity to discuss this with you further and to work through any concerns you may have about a legislative change that allow for the resumption of an effectively operating MHTRS.